IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.433 OF 1996
IN
WRIT PETITION NO.348 OF 1993

Ramaswamy Murugesh
at Room No.24, Bldg. 'D'
Matunga Labour Compound,
Bombay - 400 019 .. Appellant.

V/s.

1. Shri S.G. Bhonsale,
The Then Presiding Officer,
5th Labour Court,
Arun Chambers, Tardeo,
Bombay - 400 034.

2. M/s.Consolidated Pneumatic
Tools Co. India Ltd.,
At 301/302, L.B.S. Marg,
Mulund, Bombay 400 080 .. Respondents.

Mr.A.D. Shetty for the appellant.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 21ST JUNE, 2005.

ORAL JUDGMENT (Per R.M. Lodha, J.)

The issue that arises in this appeal is: is the termination of the petitioner from service vide order dated 03.10.1985 bad in law.

2. First, we shall refer to the brief facts.

The petitioner (for short 'the workman') was employed as a Fitter in the Assembling Department of

M/s.Consolidated Pneumatic Tools Co. India Limited (for short 'the employer'). During the period of employment and particularly in the year 1981 and thereafter, the workman used to remain absent frequently on large number of days on different grounds but most of the time his absence was on the ground of illness. On 05.09.2005 the workman sought to resume his duty after prolonged absence and produced the medical certificate. In view of the workman's continuous absence on the ground of illness, the workman was sent to the medical officer Dr.Dinsukhlal Sadavarti. He examined the workman and found him unfit to work. He, however, asked him to visit him again after 15 days. After 15 days the workman visited Dr.Dinsukhlal Sadavarti. On his medical examination by Dr.Dinsukhlal Sadavarti, the workman was found unfit for work. Dr.Dinsukhlal Sadavarti asked the workman to contact the Assistant Manager Bhalerao and on that day i.e. 03.10.1985 the workman was served with the termination order on the ground of continued ill health.

3. The workman raised industrial dispute concerning his termination. Inter alia the case of the workman before the Labour Court was that his termination from service amounted to retrenchment and for want of compliance of mandatory provisions

contained in Section 25F, the termination order was bad-in-law. The employer contested the workman's claim and set up the case that the workman was very irregular in attendance and as a result thereof, the work of the department suffered on many occasions. The workman was asked to show improvement in attendance but there was no improvement and he continued to remain absent mostly on the ground of sickness. According to the employer, the medical officer of the company opined that the workman was not fit for continuation in the employment as he was suffering from chronic Obsteomyeltis with chronic non-healing ulcers with eczyma. The employer set up the case that the service of the workman was terminated due to continued ill-health and incapacity to work and that his termination was covered by the exception appended to Section 2 (oo) of the Industrial Disputes Act, 1947 (for short 'the ID Act') and there was no question of following the provisions of Section 25-F of the Industrial Disputes Act, 1947.

4. The workman as well as the employer led evidence before the Labour Court. After hearing the parties and upon consideration of the evidence on record, the 5th Labour Court rejected the reference by order dated 19.09.1992. The workman filed writ

petition before the learned Single Judge of this Court challenging the order dated 19.09.1992 passed by the 5th Labour Court. The learned Single Judge of this Court found no justifiable ground to admit the writ petition and the same was dismissed in limine by brief speaking order on 01.03.1993. This is how the matter is before us.

5. Mr.A.D. Shetty, the learned counsel for the workman argued before us that there was no documentary evidence or the medical report/s to indicate that the workman was suffering from continued ill-health. That the oral evidence of Dr.Dinsukhlal Sadavarti was not sufficient to hold that the workman was suffering from continued ill-health. While Dr.Dinsukhlal Sadavarti was only a General Practitioner, the learned counsel for the workman submitted, Dr.Aggashe was Orthopaedic Surgeon and Specialist examined by the workman and Dr.Aggashe opined that the workman was fit to stand for considerable length of time and fit to work. The learned counsel would contend that the workman could be terminated on the ground of continued ill-health only when there was no possibility of his recovering in the future. Merely because on two occasions when Dr.Dinsukhlal Sadavarti examined the workman and the workman was found not medical fit, he could not have

been terminated from service on the ground of continued ill-health. The submission of the learned counsel for the workman was that what was required to be seen was whether the illness of the workman has incapacitated him from discharging the duties and not that the workman was suffering from some disease. According to the learned counsel this aspect was totally overlooked by the Labour Court as well as the learned Single Judge. He relied upon the following judgments :

i) Workmen of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd. V/s. Its Management; 1962 (1) L.L.J. 213,

ii) Anand Bihari & Others V/s. Rajasthan State Road Transport Corporation & Anr; 1991 (1) CLR 525,

iii) Narendra Kumar Chandla V/s. State of Haryana & Others; 1994 (4) SCC 460,

iv) Madurai Mills Co. Ltd. V/s. Meenakshi Ammal; 1963 (1) LLJ 1,

v) Burrakur Coal Co. Ltd., V/s. Azimuddin Ashraff & Another; 1962 LLJ 434, and

vi) Bisra Stone Lime Co. Ltd. V/s. Their Workmen Mohender Dip & Ors; 1992 (1) LLJ 615.

6. On behalf of the employer none appeared.

7. Section 2 (oo) of the ID Act defines retrenchment as follows :

> "2(oo) "retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the service of a workman on the ground of continued ill-health.

8. We are only concerned with Clause (c) of Section 2 (oo) which provides that retrenchment does not mean termination of the service of a workman on the ground of continued ill-health. What is meant by continued ill-health in clause (c) ? For answer to this, we turn to few judgments cited by the learned counsel. In the case of Anand Bihari (cited supra), the Supreme Court held thus :

> "7. Even otherwise, it can scarcely be

disputed that the expression 'ill-health' used in sub-clause (c) has to be construed relatively and in its context. It must have a bearing on the normal discharge of duties. It is not any illness but that which interferes with the usual orderly functioning of the duties of the post which would be attracted by the sub-clause. Conversely, even if the illness does not affect general health or general capacity and is restricted only to a particular limb or organ but affects the efficient working of the work entrusted, it will be covered by the phrase. For it is not the capacity in general but that which is necessary to perform the duty for which the workman is engaged which is relevant and material and should be considered for the purpose. The expression 'ill-health' is defined in the new Collins Concise English Dictionary to mean 'not in good health; sick'; in Webster's Comprehensive Dictionary (International Edition) to mean 'disordered in physical condition; diseased; unwell; sick' in the Concise Oxford Dictionary (3rd Edition) to mean 'out of health' sick' with disease; with anxiety (of health); unsound; disordered, morally bad'; and in Shorter Oxford English Dictionary to mean: 'Unsound; disordered; Out of health, not well'. Therefore, any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. The phrase has also to be construed from the point of view of the consumers of the concerned products and services. If on account of a workman's disease or incapacity or debility in functioning the resultant product or the service is likely to be affected in any way or to become a risk to the health, life or property of the consumer, the disease or incapacity has to be categorised as ill-health for the purpose of the said sub-clause. Otherwise, the purpose of production for which the services of the workman are engaged will be frustrated and worst still in cases such as the present one they will endanger the lives and the property of the consumers. Hence, we have to place a realistic and not a technical or pedantic meaning on the said

> phrase. We are, therefore, more than satisfied that the said phrase would include cases of drivers such as the present ones who have developed a defective or sub-normal vision or eye-sight which is bound to interfere with their normal working as drivers."

9. The Division Bench of the Patna High Court in the case of Barrakur Coal Company Ltd. (supra) obseved thus :

> "5. ..... If the expression 'continued ill-health' is susceptible of a narrower interpretation and means continued illness due to some organic disease, and if retrenchment means nothing but discharge of a portion of labour force as surplusage, then a person not suffering from any disease, but wholly disabled for active duties due to physical infirmity or otherwise, will not come within the purview of this Act. The acceptance of the argument of the learned Government Advocate will, therefore, introduce in the Act an anomaly nor obviously in the contemplation of the legislature. In my considered judgment, 'continued ill-health' includes any physical defect or infirmity incapacitating a workman for future work for an indefinite period."

10. In Bisra Stone Lime Company Ltd. (supra) the Division Bench of the Orissa High Court examined the expression 'continued ill-health' and in para 4 of the report held thus :

> "4. Ill-health means disease, physical defect or infirmity or unsoundness. A person who is not free from disease is certainly not possessing a sound health for active duties and if this sort of thing continued for a long period, he must be said to be suffering from continued ill-health, for continued ill-health suggests that it is prolonged for a considerable period.

> Ill-health, which is intermittent, cannot be termed as continued ill-health. It should be of sufficiently long duration and continuous."

11. The expression 'continued ill-health' occurring in sub-clause (c) of Section 2 (oo) has to be given contextual meaning. In the context, obviously it should mean the condition of the health of an employee that consistently affects the functioning of the duties of the post. It is not the gravity of disease that would alone fall, within the meaning of expression 'continued ill-health' but its affection on the due discharge of the normal duties. Ill-health is something not in good health. It is disordered physical condition. To find out whether the person is in continued ill-health for the purposes of sub clause (c) of Section 2 (oo) of the ID Act is what is to be seen is whether such person does not possess good health for a considerable long period and that has affected him from active duties. The disease in the body may result in ill-health if it continues over a period of time affecting normal discharge of duties and if that happens a person can be said to be suffering from continued ill-health. As the Supreme Court said in the case cited supra that one has to place a realistic and not a technical or pedantic meaning on the phrase 'continued ill-health'. An illness over a period of time that

affects in discharge of duties would bring into operation sub-clause (c) and the workman can be said to be suffering from continued ill-health. The phrase 'continued ill-health' also has to be given colour to cover the cases if on account of illness of the employee the product or service has been affected or likely to be affected.

12. Keeping the aforesaid legal position in mind, now we turn to the facts of the case. Not much dispute is there that the workman is suffering from chronic Osteomylitis with chronic non-healing ulcers with eczyma. The workman's own witness Dr.V.M. Aggashe said in his deposition about that before the Labour Court. The fact that the workman remained absent for 70 days in the year 1981 is not disputed by him. His explanation before the Labour Court was that all these 70 days he was not sick and he was sick only for 48 days. We take the workman's words that he was absent for 48 days on the ground of sickness in the year 1981. In the year 1982, the workman remained absent for 220 days. He admitted in his statement that he was sick for 168 days in the year 1982. Again in the year 1983 the workman remained absent for 207 days. In the year 1984, he remained absent for 76 days. Then the workman remained absent for 173 days in the year 1985 until

03.10.1985. The learned counsel for the workman sought to contend that whenever the workman was ill, he applied for medical leave and that was granted and, therefore, all of a sudden on 03.10.1985 he could not have been terminated on the purported ground of ill-health. He also contended that Dr.Sadavarti examined the workman only on two occasions and that too for five minutes each and on that basis the workman could not have been held to have become unfit for continuation in the job. The contentions of the learned counsel for the workman can hardly be accepted. In view of the admitted position that in the years 1981, 1982, 1983, 1984 and 1985, the workman remained absent for large number of days on the ground of medical leave leads to an adverse inference of prolonged illness. The workman is a fitter. Dr.Dinsukhlal Sadavarti deposed that the workman was unable to stand for a longer time. There does not seem to be any dispute that the work of a fitter is in standing position and that fitter's job cannot be done in sitting position. Surely the workman would not take medical leave if he was in a position to work. If in last five years preceding the order of termination, the workman remained absent for large number of days on the ground of medical leave, logically it follows that he remained absent because of continued ill-health and his inability to

discharge his duties. The expression 'continued ill-health' in sub-clause (c) of Section 2 (oo) does not mean uninterrupted continued ill-health but what it means is ill-health for considerable period and long duration affecting normal duties. In the facts and circumstances of the case, the findings recorded by the Labour Court that the workman was suffering from continued ill-health and that ill-health prolonged for considerable period cannot be said to suffer from any illegality or perversity and the learned Single Judge cannot be said to have erred in concurring with the said view in its brief order dismissing the writ petition at motion hearing stage.

13. The appeal, therefore, fails and is dismissed with no order as to costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)